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Defense Department Original Transformation Proposal: Compared to Existing Law

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Defense Department Original Transformation Proposal: Compared To Existing Law

Summary

The Department of Defense (DOD) has sent the Congress a major proposal entitled "Defense Transformation for the 21st Century Act of 2003" on April 10, 2003. The complex proposal would have made many changes, and in some cases, major changes, in the military personnel and acquisition systems, and in the statutory basis for much of DOD's civilian personnel system. The changes would have affected in a number of titles in the United States Code but primarily in Title 5 (Government Organization and Employees), and Title 10 (Armed Forces). A number of congressional committees have begun action on various parts of this proposal. The Senate Armed Services Committee reported S. 1050 on May 9 (S.Rept. 108-46), and the House Armed Services Committee reported H.R. 1588 on May 16 (H.Rept. 108-106); the House Committee on Government Reform reported H.R. 1836 on May 8 (ordered to be reported (amended) by voice vote).

This report briefly summarizes and presents all of the sections of the original DOD proposal in a side by side with the relevant provisions in current law, if they exist, that would have been affected by the proposal. The idea is to provide a "road map" that relates each section of the proposal to existing law. Provisions from the Homeland Security Act (HSA) of 2002 specific to the Department of Homeland Security are separately listed from the rest of the existing law, and are the most recently enacted changes to Title 5. The Homeland Security Act represents the broadest changes in the Title in a number of years. HSA provisions that applied government-wide are covered under "Current Law" (Column 2) of the report. The DOD proposal, if it had been enacted in its entirety, would have resulted in significantly greater changes in Title 5 than the HSA changes.

The DOD proposal covered a wide spectrum of current law. As a result, a number of Congressional Research Service (CRS) analysts and attorneys contributed to this report. Most are listed in a "Key Policy Staff" table at the end of this report. This report will be updated if additional clarification of DOD's proposal or relevant current law is warranted.

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Defense Department Original Transformation Proposal: Compared To Existing Law

Introduction

In April 2003, the Department of Defense (DOD) sent Congress a proposal entitled, "Defense Transformation for the 21st Century Act of 2003."[1] The 207-page proposal would have made many changes, in some cases major changes, in the military personnel and acquisition systems, and in the statutory basis for much of DOD's civilian personnel system. The changes would have occurred in a number of titles in the U.S. Code; but, primarily in Title 5 (Government Organization and Employees) and Title 10 (Armed Forces). A number of congressional committees have begun action on various parts of this proposal. The Senate Armed Services Committee reported S. 1050 on May 9 (S.Rept. 108-46), and the House Armed Services Committee reported H.R. 1588 on May 16 (H.Rept. 108-106); the House Committee on Government Reform reported H.R. 1836 on May 8 (ordered to reported (amended) by voice vote).

This report summarizes and lists all of the proposal's sections along side the relevant provisions in current law, if they exist, that would have been impacted by the proposal. The idea is to provide the reader with a type of roadmap that would help relate each aspect of the proposal to existing law. Provisions from the Homeland Security Act (HSA) of 2002 specific to personnel management in the Department of Homeland Security are listed separately from the rest of the current law primarily because they are the most recent legislative actions impacting Title 5. HSA provisions that applied government-wide are covered under "Current Law" (column 2) of the report. HSA provisions also represent the broadest changes in Title 5 in a number of years. The DOD proposal, if it had been enacted in its entirety, would have resulted in significantly greater changes in Title 5 than the HSA changes.

Because the DOD proposal covered such a wide spectrum of current law, a number of Congressional Research Service (CRS) analysts and attorneys contributed to this report. Most are listed with their subject coverage in a separate table in this report. CRS made every effort to be comprehensive in identifying statutes currently in effect which would relate to the proposed change in the law. However, there may be some provision in law which has been inadvertently omitted. This report will not be updated unless additional clarification of DOD's proposal or relevant current law is warranted.

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[1] The DOD proposal can be viewed at:
[http://www.defenselink.mil/dodgc/irs/docs/transformation.pdf]

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Title I — Personnel Transformation		
Subtitle A — Transformation of Civilian Personnel (Sections 101-104)		
Sec. 101(a). Department of Defense (DOD) National Security Personnel System. (a) In General. Would amend 5 U.S.C. Part III, Subpart I by adding a new Chapter 99- Department of Defense National Security Personnel System	No similar provision	Sec. 841 of Homeland Security Act of 2002, P.L. 107-296, Establishment of Human Resources Management System. Amended 5 U.S.C. Part III, Subpart I by adding a new Chapter 97- Department of Homeland Security (DHS)
New 5 U.S.C. 9901 - Definitions. The term "director" means the Director of the Office of Personnel Management (OPM); the term "secretary" means the Secretary of Defense.	No similar provision	No similar provision
New 5 U.S.C. 9902. Establishment of human resources management system	No similar provision	5 U.S.C. 9701 - Establishment of human resources management system.
New 5 U.S.C. 9902(a) - In General. (1) Notwithstanding any other provision of Title 5, the secretary could, in regulations prescribed jointly with the director, establish, and from time to time adjust, a human resources	No similar provision	5 U.S.C. 9701(a) - In General. The DHS Secretary and OPM Director have the same authority to establish and adjust a new system.

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management system for some or all of the organizational or functional units of DOD. If the secretary certifies that issuance or adjustment of a regulation, or the inclusion, exclusion, or modification of a particular provision therein, is essential to the national security, the secretary could, subject to the President's direction, waive the requirement in the preceding sentence that the regulation or adjustment be issued jointly with the director. (2) Any regulations established pursuant to Chapter 99 would be established as internal rules of departmental procedure, consistent with		No similar waiver provision
5 U.S.C. 553.	5 U.S.C. 553 - Rule making exempts rules of agency or departmental procedure from Federal Register notice and comment requirements.	Same, except that internal rules of departmental procedure "shall not be subject to review" rather than "consistent with 5 U.S.C. 553."
New 5 U.S.C. 9902(b) - System Requirements. Any system under (a) would (1) be flexible; (2) be contemporary; (3) not waive, modify, or otherwise affect — (A) the public employment principles of merit and fitness set forth in 5 U.S.C. 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for	The provisions of Title 5 that could not be waived, modified, or otherwise affected are 5 U.S.C. 2301 — Merit system principles 5 U.S.C. 2302 — Prohibited personnel practices	5 U.S.C. 9701(b) - System Requirements. Same, except as noted.

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equal work, and protection of employees against reprisal for whistleblowing; (B) any provision of 5 U.S.C. 2302 relating to prohibited personnel practices; (C)(i) any provision of law referred to in 5 U.S.C. 2302(b)(1), (8), and (9); or (ii) any provision of law implementing any provision of law referred to in 5 U.S.C. 2302(b)(1), (8), and (9) by (I) providing for equal employment opportunity through affirmative action; or (II) providing any right or remedy available to any employee or applicant for employment in the public service; (D) any other provision of 5 U.S.C. Part III (as described in subsection (c)); or (E) any rule or regulation prescribed under any provision of law referred to in this paragraph;		uses "civil service" instead of "public service"
(4) ensure that employees could organize, bargain collectively as provided for in Chapter 99, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of Chapter 99 and any exclusion from coverage or limitation on negotiability established pursuant to law; and		does not include "subject to the provisions of Chapter 99"
(5) not be limited by any specific law or authority under Title 5 that is waivable under Chapter 99 or by any provision of Chapter 99 or any rule or regulation prescribed under Title 5 that is waivable under Chapter 99, except as specifically provided for in this section.		

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		(5) not included; (5) in the DHS Act permits category rating system
(c) Other Nonwaivable Provisions. The other provisions of this part referred to in (b)(3)(D) are (to the extent not otherwise specified in this title) — (1) Subparts A, E, G, and H of 5 U.S.C. Part III; It adopts current law.	Other protected Title 5 provisions would be: (1) Part III — Employees (table of contents of Part III precedes 5 U.S.C. 2101 Subpart A — General Provisions Subpart E — Attendance and Leave Subpart G — Insurance and Annuities Subpart H - Access to Criminal History Information	5 U.S.C. 9701(c) Other Nonwaivable Provisions. (1) Part III - Employees Subparts A, B - Employment and Retention, E, G, and H
(2) 5 U.S.C. Chapters 34, 45, 47, 57, 72, 73, and 79; It adopts current law and	(2) 5 U.S.C. Chapters 34 — Part-Time Career Employment Opportunities (in Subpart B- Employment and Retention) 45 — Awards for Superior Accomplishments 47 — Personnel Research Programs and Demonstration Projects 57 — Travel, Transportation, and Subsistence 72 — Anti-discrimination; Right to Petition Congress 73 — Employees' Right to Petition Congress 79 — Services to Employees	(2) 5 U.S.C. Chapters 41 - Training, 45, 47, 55 - Pay Administration, 57, 59 -Allowances, 72, 73, and 79
	(3) Selected sections of Subpart B - Employment and Retention of Part III - Employees: 5 U.S.C. 3131 — The Senior Executive	

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(3) 5 U.S.C. 3131, 3132(a), 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), and 3504. It adopts current law.	Service; 3132(a) — [SES] Definitions and exclusions; 3305(b) - Competitive service; examinations; when held (3305(b) requires OPM to hold an examination for a qualifying competitive service position upon application of certain preference eligibles during the quarter following the application); 3309 - Preference eligibles; examinations; additional points for; 3310 - Preference eligibles; examinations; guards, elevator operators, messengers, and custodians; 3311 - Preference eligibles; examinations; crediting experience; 3312 - Preference eligibles; physical qualifications; waiver; 3313 - Competitive service; registers of eligibles; 3314 - Registers; preference eligibles who resigned; 3315 - Registers; preference eligibles furloughed or separated; 3316 - Preference eligibles; reinstatement; and 3317(b) — Competitive service; certification from registers (the Rule of Three, which requires OPM to certify enough names from the top of a register to permit a nominating or appointing authority to consider at least three names for each competitive service vacancy, is 3317(a) and not listed as nonwaivable); 3317(b) allows an appointing authority, with OPM approval, to discontinue certifying for appointment a preference eligible who three times has been considered and passed over,	(3) All of Subpart B of 5 U.S.C. Part III is nonwaivable

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	but the preference eligible is entitled to notice of discontinuance of certification); 3318 - Competitive service; selection from certificates; 3320 — Excepted service; government of the District of Columbia; selection; 3351 - Preference eligibles; transfer; physical qualifications; waiver; 3352 — Preference in transfers for employees making certain disclosures; 3363 — Preference eligibles; promotion; physical qualifications; waiver; 3501 — Definitions and application for the purpose of retention preferences; 3502(b) — Preference eligibles in the order of retention preference (3502(b) entitles a qualifying preference eligible with a service-connected disability of 30 percent or more to retention over other preference eligibles); 3504 — Preference eligibles; retention; physical qualifications; waiver	
New 5 U.S.C. 9902(d) — Limitations Relating to Pay (1) Nothing in this section would constitute authority to modify the pay of any employee who serves in an Executive Schedule position under 5 U.S.C. Chapter 53, Subchapter II. 2) Except as provided for in (1), the total amount in a calendar year of allowances,	Title 5, Chapter 53 (Pay Rates and Systems), Subchapter II (Executive Schedule Pay Rates) Same, except for "under title 10;" 5 U.S.C. 5307 - Limitation on certain payments caps	5 U.S.C. 9701(d) Limitations Relating to Pay. Nothing in this section constitutes authority (1) Same, except that it adds "or a position for which the rate of basic pay is fixed in statute by reference to a section or level under 5 U.S.C. Chapter 53, Subchapter II;" (2) to fix pay for any employee or position at an annual rate greater than

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differentials, bonuses, awards, or other similar cash payments paid under Title 5 to any employee who is paid under 5 U.S.C. 5376 or 5383 or under Title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees could not exceed the total annual compensation payable to the Vice President.	total pay, including all cash payments such as allowances and awards, to the annual rate of basic pay for level I of the Executive Schedule ($171,900 in 2003); however, for those paid under 5 U.S.C. 5376 — Pay for certain senior level positions (including those classified above GS-15, scientific and professional positions under 5 U.S.C. 3104, and SES); or 5 U.S.C. 5383 — Setting individual senior executive pay, the cap is the total compensation payable to the Vice President under 3 U.S.C. 104 - Salary of the Vice President ($198,600) 10 U.S.C. 1603 Basic pay (Defense Intelligence Senior Executive Service and Intelligence Senior Level positions)	the maximum amount of cash compensation allowable under 5 U.S.C. 5307 - Limitations on certain payments in a year; or (3) to exempt any employee from the application of 5 U.S.C. 5307. The cap for positions under 5 U.S.C. 5376 and 5383 was raised from level I of the Executive Schedule to the total compensation of the Vice President, under specific conditions, by sec. 1322 of P.L. 107-296.
New 5 U.S.C. 9902(e) — Provisions to Ensure Collaboration with Employee Representatives The secretary and OPM Director would be required to provide a written description of the proposed human resources management system or adjustments to such system to employee	No similar provision concerning collaboration and development of a new human resources management system, but labor organizations having national consultation rights in connection with any agency must be informed of any substantive change in conditions of employment proposed by an agency, and must	5 U.S.C. 9701(e) Same, except that the DHS Secretary is not granted authority to engage in collaborative activities at a national organizational level above the level of exclusive recognition. Moreover, DHS collaboration procedures must ensure

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representatives. The representatives would be given at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal. These recommendations would have to be given full and fair consideration. The secretary and director would notify Congress of those parts of the proposal for which recommendations were made but not accepted. They also would be required to meet and confer with employee representatives for not less than 30 calendar days to attempt to reach agreement on whether and how to proceed with those parts of the proposal for which recommendations were not accepted. The secretary or a majority of the employees' representatives participating in the consultation could use the services of the Federal Mediation and Conciliation Service to assist with the discussions. After 30 calendar days following notification and consultation, the secretary could implement any or all of the disputed parts if it was determined that further consultation and mediation would be unlikely to produce agreement. The secretary and director would develop a method for employee representatives to participate in any further planning or development if a proposal was implemented. Any procedures necessary to facilitate collaboration would be established as	be permitted reasonable time to present their views and recommendations regarding changes. *See* 5 U.S.C. 7113 -National consultation rights.	— (1) in the case of individuals in a labor organization that has been accorded exclusive recognition, representation by individuals designated by or from such organization; (2) in the case of individuals not within a bargaining unit, representation by an organization which represents a substantial number; (3) fair and expeditious handling of the consultation and mediation process, including procedures by which, if the number of employee representatives exceeds 5, for representatives to select a committee to meet and confer with the secretary and Director of OPM; and (4) selection of representatives in a manner consistent with the relative number of employees represented by organizations or other representatives involved. Title 5, Chapter 71 - Labor-Management and Employee Relations is subject to waiver or adjustment in developing a new human resources management system.

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internal rules of department procedure not subject to review.	5 U.S.C. 553 - Rule making waives Federal Register notice and comment procedures for internal agency rules of procedure. 5 U.S.C. 7103(b) - Definitions; application authorizes the president to issue an order excluding an agency or subdivision thereof if the president determines that either has as a primary function intelligence, counterintelligence, or national security work and that Chapter 71 procedures cannot be applied consistent with national security. The president may issue an order with respect to any agency, installation, or activity located outside the 50 states and D.C. if the president determines the suspension necessary in the interest of national security.	*See also* 5 U.S.C. 9701(g) - Establishment of Human Resources Management System - Provisions Relating to Labor-Management Relations, which provides that nothing in the new section shall be construed as conferring authority on the DHS to modify any provisions of section 842 - Labor- Management Relations of P.L. 107-296. Sec. 642 grants some measure of protection to agencies, bargaining units, and individuals from exclusion from coverage of Title 5 Chapter 71- Labor Management and Employee Relations unless missions change to intelligence, counterintelligence, or investigating terrorism; and sec. 1512 of P.L. 107-296 - Savings Provisions states that completed administrative actions, including contracts, of an agency affected by the DHS Act shall not be affected by enactment of the Act, and, except as otherwise provided in the Act, transfer of personnel does not alter the terms and conditions of employment, including compensation, of any transferred employee.

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New 5 U.S.C. 9902(f) — Provisions Regarding National Level Bargaining Any human resources management system implemented or modified under the new title 5, chapter 99 could include DOD employees from any bargaining unit with respect to which a labor organization was accorded exclusive recognition. For any such bargaining unit, the secretary could bargain at a level above the level of exclusive recognition Such bargaining would be binding on all subordinate bargaining units and DOD and its subcomponents; it would supersede all other collective bargaining agreements, except as otherwise determined by the secretary; would not be subject to further negotiations for any purpose, except as provided for by the secretary; and would not be subject to review or statutory third-party dispute resolution procedures outside DOD, except as otherwise provided in the new chapter 99.	No similar provision with respect to national level bargaining, *but see* 5 U.S.C. 7111 - Exclusive recognition of labor organizations, and 5 U.S.C. 7114 - Representation rights and duties. 5 U.S.C. 7105 - Powers and duties of the [Federal Labor Relations] Authority	No similar provision, but Title 5, Chapter 71 - Labor-Management and Employee Relations is subject to waiver or adjustment in developing a human resources management system.
New 5 U.S.C. 9902(g) — Provisions Relating to Appellate Procedures. (1) The sense of Congress would be expressed that — (A) DOD employees would be entitled to fair treatment in any appeals; and (B) in prescribing appellate procedure regulations the secretary should ensure that these employees should be afforded the protections of due process; and (ii) toward	Title 5, Chapter 77 - "Appellate procedures" grants right to appeal agency disciplinary actions to the Merit System Protection Board.	5 U.S.C. 9701(f) Provisions Relating to Appellate Procedures. Nearly identical substantive language that substitutes "Department," referring to DHS, in place of DOD. Title 5, Chapter 77 - "Appellate procedures" is subject to waiver or

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that end, the secretary should be required to consult with the Merit Systems Protection Board before issuing any such regulations. (2) Any appellate procedure regulations that relate to any matters within the purview of Chapter 77 of Title 5 should — (A) be issued only after consulting with MSPB; (B) ensure availability of procedures that (i) are consistent with due process requirements; and (ii) provide, to the maximum extent practicable, for expeditious handling of any matters involving DOD; and (C) modify procedures under Chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving DOD employees.		adjustment in developing a human resources management system.
New 5 U.S.C. 9902(h) — Provisions Related to Separation and Retirement Incentives The secretary is authorized to offer (1) early retirement to an employee who is at least 50 years of age and has completed 20 years of service or to an employee of any age who has completed 25 years of service; and (2) separation incentive pay of up to $25,000 for a qualifying DOD employee who retires or	5 U.S.C. 8336 - Immediate Retirement (CSRS) and 5 U.S.C. 8414 - Early retirement (FERS)	Sec. 472. Similar voluntary separation incentives authorized for the Immigration and Naturalization Service and Border Patrol Same as current law; sec. 1313(b) of P.L. 107-296 - Permanent Extension, Revision, and Expansion of Authorities for Use of Voluntary

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resigns pursuant to DOD regulations. Any recipient of separation pay may not be reemployed with DOD for 12 months following receipt unless the secretary waives this prohibition on a case-by-case basis. Generally, any such recipient who is reemployed by the federal government within 5 years must repay DOD the full amount of a separation payment. No O.M. approval would be needed to offer early retirement or separation pay.	Title 5, Chapter 35 -Retention Preference, Voluntary Separation Incentive Payments, Restoration, and Reemployment, Subchapter II - Voluntary Separation Incentive Payments (5 U.S.C. 3521-3525) authorizes agencies, with O.M.'s approval to make voluntary separation incentive payments of up to $25,000 to eligible employees who retire or resign.	Separation Incentive Pay and Early Retirement amended 5 U.S.C. 8336 and 8414 to expand the conditions occurring in an agency such as downsizing or restructuring to permit exercise of early retirement authority. Same as current law; sec. 1313 (a) of P.L. 107-296 authorized this governmentwide authority with OPM approval at 5 U.S.C. 3521-3525.
New 5 U.S.C. 9902(i) — Provisions Relating to Reemployment. An annuitant who becomes employed in a position within DOD would continue to receive an annuity, but would not be considered an employee for purposes of Chapters 83 (CSRS) or 84 (FERS) of Title 5. The reemployed annuitant would not accrue additional CSRS or FERS retirement credit during this period of reemployment.	5 U.S.C. 8344 - Annuities and pay on reemployment (CSRS) and 5 U.S.C. 8468 - Annuities and pay on redeployment (FERS) generally require that the amount of an annuity be deducted from pay received by a reemployed annuitant, but an annuitant who is reemployed for more than one year is eligible for a supplemental annuity for the period of reemployment at retirement.	No similar provision
No sunset provision	No similar provision	5 U.S.C. 9701 - Sunset Provisions provides that all authority of the DHS Secretary and OPM Director jointly to issue regulations to establish and adjust the DHS human resources management system ceases to be available.

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New 5 U.S.C. 9903. Contracting for personal services.		No similar provision
New 5 U.S.C. 9903(a) - Outside the United States. Funds available to the Department of Defense would be available to contract with individuals for services to be performed outside the United States as determined by the secretary to be necessary and appropriate. These contractors would not be considered employees of the United States government for purposes of any law administered by OPM or under any human resources management system established pursuant to the new chapter 99 of title 5. These contracts could be negotiated, their terms prescribed, and the work could be performed where necessary, without regard to statutory provisions that relate to negotiating, making, and performing contracts and performing work in the United States.	*See, for example*, Title 41, Chapter 6 - Service Contract Labor Standards.	Sec. 835 of P.L. 107-296 - Prohibition on Contracts with Corporate Expatriates
New 5 U.S.C. 9903(b) - National Security Missions. Notwithstanding any other provision of law, sums made available to the DOD by appropriation or otherwise could be expended as determined by the secretary to be necessary to carry out the national security mission of DOD, for personal services contracts, including personal service without regard to limitations on types of persons to be employed.	*See, for example*, 10 U.S.C. 2393 - Prohibition against doing business with certain offerors or contractors, 10 U.S.C. 2408 - Prohibition on persons convicted of defense contract related felonies and related criminal penalty on defense contractors, and 50 U.S.C. 403j- Central Intelligence Agency; appropriations; expenditures. *See also* 50 U.S.C. 403j - Central Intelligence Agency; appropriations; expenditures, which	No similar provision

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	authorizes sums made available to the CIA by appropriation or otherwise to be expended, among other things, for personal services, including personal services without regard to limitations on types of persons to be employed.	
New 5 U.S.C. 9903(c) - Experts and Consultants. - Subject to paragraphs (2) and (3) and notwithstanding provisions of 10 U.S.C. 129b, the secretary would be authorized to (A) procure by contract the services of experts and consultants (or organizations of them), who may provide such services with or without compensation as determined by the secretary, and may perform such duties as the secretary may prescribe without being deemed to be employees of DOD except, at the discretion of the secretary, for the purposes of (i) the Ethics in Government Act of 1978; (ii) Chapter 73 of title 5 (Suitability, Security, and Conduct); and (iii) section 27 of the Office of Federal Procurement Policy Act; and (B) pay travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals travel from their homes of places of business to official duty stations and return, as may be authorized by law. (2) To procure the services of experts or consultants (or an organization of them), the	5 U.S.C. 3109 - Employment of experts and consultants generally limits temporary contract services to one year and pay for temporary and intermittent contract services to the daily equivalent rate of pay to the highest allowed in 5 U.S.C. 5332 (the General Schedule). 10 U.S.C. 129b - Experts and Consultants; authority to procure services of generally provides that authority should be exercised in accordance with 5 U.S.C. 3109.	Sec. 831(c) of P.L. 107-296 - Procurement of Temporary and Intermittent Services (in research and development projects) authorizes procurement of temporary and intermittent services of experts and consultants in accordance with 5 U.S.C. 3109, without regard to pay limitation in section 3109. Sec. 832 - Personal services. Authorizes procurement of temporary or intermittent services of experts or consultants in accordance with 5 U.S.C. 3109, but, when necessary to meet an urgent homeland security needs, without regard to the pay limitations in section 3109.

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secretary would be required to determine that (A) such procurement is advantageous to the United States; and (B) these services cannot be provided adequately by DOD; 3 [the proposal copy we have been given does not have a paragraph 3 of 9903(c), only paragraphs 1 and 2].		
New 5 U.S.C. 9903(d) - Implementation. Implementation of this section would be at the secretary's sole, exclusive, and unreviewable discretion.	No similar provision	No similar provision
New 5 U.S.C. 9904. Attracting highly qualified experts.		No similar provision
New 5 U.S.C. 9904(a) In General. The Secretary could carry out a program using the authority provided in (b) in order to attract highly qualified experts in needed occupations, as determined by the secretary.	P.L. 105-261, sec. 1101 (1998) (5 U.S.C. 3104(a) note) - Defense Advanced Research Projects Agency Experimental Personnel Management Program for Technical Personnel granted the Secretary of Defense for five years experimental special management authority to facilitate recruitment of eminent experts in science and engineering for the Defense Advanced Research Projects Agency.	No similar provision
New 5 U.S.C. 9904(b) - Authority. Under the program, the secretary could — (1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in	5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel 5 U.S.C. 3104(b) note. Similar, but special	No similar provision

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5 U.S.C. 2101) to positions in DOD without regard to any provision of this title governing the appointment of employees to positions in DOD; (2) prescribe the rates of basic pay for positions to which employees are appointed under (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under 5 U.S.C. 5376, as increased by locality-based comparability payments, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and (3) pay any employee appointed under (1) payments in addition to basic pay within the limit applicable to the employee under (d)(1) below.	appointment authority is limited to "scientists and engineers" and "not more than 20 scientific and engineering positions in the Defense Advanced Research Projects Agency." Same authority to prescribe basic rate of pay, but no authority to increase basic pay by locality-based comparability payments. 5 U.S.C. 3324 - Appointments to positions classified above GS-15 (generally requires OPM approval) 5 U.S.C. 3325 - Appointments to scientific and professional positions (generally requires OPM approval of qualifications) 5 U.S.C. 3326 - Appointments of retired members of the armed services in the Department of Defense (imposes certain requirements on appointments of a retired armed services member in the period within 180 days immediately following retirement from the armed services) (proposed for repeal, *see* sec. 404) 5 U.S.C. 5376 - "Pay for certain senior- level positions" generally limits pay to not less than 120 percent of the minimum basic pay rate for GS-15 and not greater than basic pay rate for level IV of the Executive Schedule.	

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	5 U.S.C. 5377- "Pay authority for critical positions"generally limits the maximum basic rate to level I of the Executive Schedule. *See* 5 U.S.C. 9502 - Pay authority for critical positions and 5 U.S.C. 9503 Streamlined critical pay authority [in the Internal Revenue Service] which allows pay for up to the salary of the Vice President.	
New 5 U.S.C. 9904(c) - Limitation on Term of Appointment. (1) Except as provided in (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years. (2) The secretary could, in the case of a particular employee, extend the period to which service is limited under (1) by up to one additional year if the secretary determines that such action is necessary to promote DOD's national security missions.	5 U.S.C. 3104(c) note. Term of initial appointment limited to 4 years with up to a 2 year extension	No similar provision
New 5 U.S.C. 9904(d) - Limitations on Additional Payments. (1) The total amount of the additional payments paid to an employee under this section for any 12-month period could not exceed the least of the following amounts: (A) $50,000 in FY 2004, which could be adjusted annually thereafter by the secretary, with a percentage increase equal to one-half of one percentage points less than the percentage	5 U.S.C. 3104 note. Similar, but additional payments may not exceed the least of (A) $25,000; (B) the amount equal to 25 percent of the employee's annual rate of basic pay; (C) the amount of the limitation applicable for a calendar year under 5 U.S.C. 5307(a). Same with respect to ineligibility for any bonus, monetary award, or other monetary incentive.	Sec. 841(a) (creating 5 U.S.C. 9701(d)) Limitations Relating to Pay of P.L. 107-296 generally prohibits paying any employee at a rate greater than the maximum amount allowable under 5 U.S.C. 5307 or exempting any employee from 5 U.S.C. 5307, which generally limits total pay, including awards and other cash

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by which the Employment Cost Index (published quarterly by the Bureau of Labor Statistics) for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year. (B) The amount equal to 50 percent of the employee's annual rate of basic pay. (2) An employee appointed under this section would not be eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.	5 U.S.C. 5307 - Limitation on certain payments limits the amount to cash payments such as allowances and awards plus salary to level I of the Executive Schedule ($171,900 in 2003), except for some high level positions which are limited to the salary of the Vice President ($198,600). Title 5, Chapter 45 - Incentive Awards	payments, to level I of the Executive Schedule, except for some high level positions which are limited to the salary of the Vice President.
New 5 U.S.C. 9904(e) - Savings Provisions. In the event that the secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section — (1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of — (A) the period for which the employee was appointed; or (B) the period to which the employee's service is limited under (c), including any extension made under this section before the termination of the program; and (2) the rate of basic pay prescribed for the position under this section could not be reduced	Same	Sec. 841(b) of P.L. 107-296 - Nonseparation or Nonreduction in Grade or Compensation of Full-Time and Part-Time Personnel Holding Permanent Positions generally prevents separation or reduction in pay or grade for one year following transfer to DHS.

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as long as the employee continues to serve in the position without a break in service.	5 U.S.C. 5363 - Pay retention	
New 5 U.S.C. 9905. Employment of older Americans.		No similar provision
New 5 U.S.C. 9905(a) - In general. Notwithstanding any other provision of law, the secretary, at his sole, exclusive, and unreviewable discretion, would be authorized to appoint older Americans into positions in the excepted service for not to exceed two years, provided that (1) any such appointment would not result in (A) the displacement of individuals currently employed by DOD (including partial displacement through reduction of nonovertime hours, wages, or employment benefits); or (B) the employment of any individual when any other person is in a reduction-in- force status from the same or substantially equivalent job within DOD; and (2) the individual to be appointed is otherwise qualified for the position as determined by the secretary.	5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel 5 U.S.C. 3320 - Excepted service; government of the District of Columbia; selection 5 U.S.C. 3323 - Automatic separation; reappointment; redeployment of annuitants	No similar provision
New 5 U.S.C. 9905(b) - Effect on Existing Retirement Benefits. Notwithstanding any other provision of law, employment pursuant to this authority would not have the effect of reducing any annuity, pension, social security payment, retired pay, or other similar payment as a result of such employment that the appointee may be receiving.	5 U.S.C. 8344 - Annuities and pay on redeployment (Civil Service Retirement System) and 5 U.S.C. 8468 - Annuities and pay on redeployment (Federal Employees Retirement System) generally require a deduction from the pay of a reemployed annuitant equal to the amount of an annuity; 42 U.S.C. 403 - Reduction of insurance	No similar provision

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	benefits (section 203 of the Social Security Act) requires a reduction of social security benefits for an individual under age 65. In 2003, the social security benefit of such an individual is reduced by $1 for each $2 of earnings in excess of $11,520. 5 U.S..C. 5532, which formerly required an offset for the amount of military retired pay, has been repealed.	
New 5 U.S.C. 9905(c) - Extension of Appointment. Notwithstanding subsection (a) which authorizes initial appointment for not more than two years, the secretary would be authorized to extend an appointment of an older American for up to an additional two years if the employee possesses unique knowledge or abilities that are not otherwise available to DOD.	No similar provision	No similar provision
New 5 U.S.C. 9905(d) - Definition. The term "older American" in the section would be defined as any citizen of the United States who is at least 55 years of age.	No similar provision	No similar provision
New 5 U.S.C. 9906. Special pay and benefits for certain employees outside the United States. The secretary could provide to certain civilian employees of DOD assigned to activities	22 U.S.C. 3963 establishes the Foreign Service (FS) pay schedule. 22 U.S.C. 3965, the Senior FS schedule. 5 U.S.C. 5925 authorizes a pay differential of up to 25% over	No similar provision

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outside the United States and designated by the secretary for the purposes of this subsection — (1) allowances and benefits — (A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 or any other provision of law; or (B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency (CIA); and (2) special retirement accrual benefits and disability in the same manner provided for by the CIA Retirement Act and in section 18 of the CIA Act of 1949.	basic pay where living conditions are substantially below standards in the Continental US, and an additional 15% for personnel who agree to serve at any of 40 designated hardship posts for an additional 3 years. 5 U.S.C. 5928 authorizes a differential up to 25% of base pay where personnel safety is "threatened by civil insurrection, civil war, terrorism, or wartime conditions." 50 U.S.C. 403e et seq., the CIA Act, provides the Director of Central Intelligence (DCI) with authority to pay transportation and moving expenses, including those of dependents, to CIA personnel stationed outside of the continental United States, including expenses of authorized home leave.	
New 5 U.S.C. 9906(a). Special pay and benefits for certain employees outside the United States. The secretary could provide to certain civilian employees of DOD assigned to activities outside the United States and designated by the secretary for the purposes of this subsection — (1) allowances and benefits — (A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 or any other provision of law; or (B) comparable to those provided by the Director of Central	10 U.S.C. 1605 - Benefits for certain employees assigned outside the United States are similar, but authorizes providing allowances and benefits from more statutory sources and makes this authority effective only to the extent appropriations are available for this purpose. 22 U.S.C. 3963 establishes the Foreign Service (FS) pay schedule. 22 U.S.C. 3965, the Senior FS schedule. 5 U.S.C. 5925 authorizes a pay differential of up to 25% over	No similar provision

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Intelligence to personnel of the Central Intelligence Agency (CIA); and (2) special retirement accrual benefits and disability in the same manner provided for by the CIA Retirement Act and in section 18 of the CIA Act of 1949. Authority to pay these benefits is not limited to extent appropriations have been provided.	basic pay where living conditions are substantially below standards in the Continental US, and an additional 15% for personnel who agree to serve at any of 40 designated hardship posts for an additional 3 years. 5 U.S.C. 5928 authorizes a differential of up to 25% of base pay where personnel safety is "threatened by civil insurrection, civil war, terrorism, or wartime conditions." 50 U.S.C. 403e et seq., the CIA Act, provides the Director of Central Intelligence (DCI) with authority to pay transportation and moving expenses, including those of dependents, to CIA personnel stationed outside of the continental United States, including expenses of authorized home leave. 50 U.S.C. 403r - Special annuity computation rules for certain employees' service abroad generally allow higher annuity rates for overseas service.	
Sec. 101(b). Impact on Department of Defense Civilian Personnel. - (1) Any exercise of authority under the new Chapter 99 of Title 5, including under any system established under such chapter, would have to be in conformance with the requirements of this subsection. (2) No other provision of the act, or any provision made by it, should be construed or applied in a	No similar provision	Sec. 841(b)(3) of P.L. 107-296 - Coordination Rule is identical to the proposed 101(b)(1) of DOD proposal, except it refers to Chapter 97 of 5 U.S.C. rather than Chapter 99; but there is no counterpart to 101(b)(2) of the DOD proposal.

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manner so as to limit, supersede, or otherwise affect provisions of section 9906, except to the extent that it does so by specific reference to section 9906.		
Sec. 101(c) of the DOD Proposal "Conforming Amendments" — would repeal: (1) sec. 6 of the Civil Service Miscellaneous Amendments Act of 1983 (P.L. 98-224, 98 Stat. 49), as amended; (2) sec. 342 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337, 108 Stat. 2721), as amended;	Sec. 6 of P.L. 98-224 "Authority to Continue Demonstration Project" authorized the Dept. of the Navy to continue operation of the demonstration project authorized by 5 U.S.C. 4703, at the Naval Weapons Center, China Lake, Calif., and at the Naval Ocean Systems Center, San Diego, Calif., until Sept. 30, 1990, without regard to 5 U.S.C. 4703(d)(1), which limits each demonstration project to not more than 5,000 individuals and terminates it before the end of the 5 year period after the project takes effect. Sec. 342 of P.L.103-337 "Extension and Expansion of Authority to Conduct Personnel Demonstration Projects" extended the time period for operating demonstration projects referred to in sec. 6 of P.L. 98-224, and granted personnel demonstration authority to the Secretary of Defense, with approval of the OPM Director, to expand this authority to DOD laboratories that the DOD Secretary has designated as science and technology reinvention laboratories. Limitations on the number of personnel, the duration, and number of projects set out in 5 U.S.C. sec.	

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	4703(d) were waived and made sec. 342 rather than 5 U.S.C. 4703 appropriate authority to extend and expand these projects.	
(3) sec. 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261; 112 Stat. 2139), as amended; and	Sec. 1101 of P.L. 105-261 "Defense Advanced Research Projects Agency Experimental Personnel Management Program for Technical Personnel" (5 U.S.C. 3104 note) authorizes the Secretary of Defense, during the five year period beginning on the date of enactment (Oct. 17, 1998) on an experimental basis to (1) appoint scientists and engineers from outside the civil service and uniformed services to not more than 20 scientific and engineering positions in the Defense Advanced Research Projects Agency without regard to any provision of title 5, U.S. Code, governing the appointment of employees in the civil service, (2) pay rates of basic pay for positions to which these employees are appointed at rates not in excess of the maximum rate of basic pay authorized for senior level positions under 5 U.S.C. 5376, notwithstanding any provision of title 5 governing rates of pay or classification of employees in the executive branch; and (3) pay any employee so appointed payments in addition to basic pay of the least of (A) $25,000; (B) the amount equal to 25 percent of the employee's rate of basic pay; or (C) the amount of the limitation applicable for a	

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	calendar year under 5 U.S.C. 5307(a)(1). An employee appointed under this authority is not eligible for any bonus, monetary award, or monetary incentive for service except for these additional payments. Such an appointment may not exceed 4 years, but the secretary may extend the period of service by up to 2 years. Authority to make these appointments terminates 5 years after the date of enactment and after termination (1) no appointment may be made under it; (2) a rate of basic pay for such appointment may not take effect; and (3) no period of service may be extended. In the case of an employee who is appointed pursuant to this authority, (1) terminating the program does not terminate the employee's employment before the lesser of — (A) the period for which the employee was appointed; (B) the period to which the employee's service is limited, including any extension; and (2) the rate of basic pay may not be reduced for so long as the employee continues to serve in the position.	
(4) sec. 4308 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106; 110 Stat. 669) as amended.	Sec. 4308 of P.L. 104-106 "Demonstration Project Relating to Certain Personnel Management Policies and Procedures" encouraged the DOD Secretary to commence personnel demonstration projects for acquisition workforce at DOD, under	

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	authority of 5 U.S.C. 4703, with some modifications.	
Sec. 102. Defense Acquisition Workforce Improvement Act (DAWIA) streamlining. Would amend Title 10, U.S.C. to create a new chapter 87A entitled "Defense Acquisition Workforce Streamlining." This new section would implement statutory changes in the management of the training, career accession, and career education for the "acquisition, technology, and logistics workforce,"and codify such changes in the U.S. Code.	Title 10, U.S.C., Chapter 87, Sections 1701-1764 DAWIA is the basis for nearly all of DOD's education, training and career development programs for the acquisition workforce. Congress enacted DAWIA in the FY1991 Defense Authorization Act. It is codified in Chapter 87, Title 10, U.S.C., and has been amended several times since enactment.	No similar provision
Sec. 103. Priority placement of displaced civilian employees. Would add, to Title 10, U.S.C., a new section 1599e, entitled "Defense priority placement system." Gives Secretary of Defense authority to establish one or more programs to provide displaced DOD civilian employees with priority consideration for other DOD civilian employee positions. Prohibits appeals of any personnel actions undertaken pursuant to such programs outside of DOD.	No such program or similar statutes currently exist in Title 10, but Title 5, U.S.C., particularly the subchapters of chapter 35, U.S.C., Retention Preference, Restoration, and Reemployment, are relevant. Subchapter I, Retention Preference, 5 U.S.C. 3501 et seq.; and Subchapter V, Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Service, 5 U.S.C. 3591 et seq., contains numerous provisions related to placement of employees after they lose their positions.	No similar provision
Sec. 104. Establishment of auxiliaries within the military departments to coordinate volunteer efforts.	No directly-related existing statutes. Ch. 909, title 10, U.S.C., 10 U.S.C. 9441 et. seq., Civil Air Patrol; and ch. 23, title 14, U.S.C., 14	No similar provision

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Would add, to Title 10, U.S.C., a new chapter 1015, entitled "Auxiliaries." Auxiliaries would be volunteers who would assist military departments in performing non-combat functions. Systematizes DOD management of volunteers.	U.S.C. 821 et seq., Coast Guard Auxiliary, are the statutory bases for the two existing auxiliary components of the armed forces.	
Subtitle B — Transformation of Management of Senior Military Leadership (Sections 111-123)		
Sec. 111. Equivalency of pay for service chiefs of staff and combatant commanders. Specifies an identical rate of basic pay for certain senior officers (Chairman of the Joint Chiefs of Staff, Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, and Combatant Commanders). Rate of basic pay would be 110% of the basic pay for an officer in the O-10 grade with more than 26 years of service. Adds Combatant Commanders to the list of people eligible for special rule for computation of retired pay.	No specific provision comparable. 37 U.S.C. 203 prescribes rates of basic pay in accordance with 37 U.S.C. 1009; JCS Chairman's and service chiefs' pay first specified in Subsection 1(1), PL 85-422. Vice Chairman's pay included by Subsection 1314(d)(3), PL 100-180, 101 Stat. 1019 at 1176. 10 U.S.C. 1406 (1) contains special rule for computation of retired pay for former Chairman and Vice-Chairman of the Joint Chiefs of Staff, service Chiefs, and Services' Senior enlisted people.	No similar provision
Sec. 112. Length of service for senior leaders of the military departments. Specifies a four-year term for Service Chiefs, which the President may extend as he deems necessary.	10 U.S.C. 3033(a), 5033(a), 5043(a), and 8033(a) specify a four-year term for service chiefs, with one four-year extension allowed in time of war or natl emergency declared by Congress.	No similar provision

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Sec. 113. Length of service for the Chairman and Vice Chairman of the Joint Chiefs of Staff. Specifies a two year term for the Chairman and Vice-Chairman of the Joint Chiefs of Staff; allows the President to reappoint for additional two year terms as he deems necessary.	10 U.S.C. 152 prescribes a two-year term for JCS Chairman, beginning October 1, of odd-numbered years; may be reappointed twice in peace time and may be reappointed without limit in time of war. 10 U.S.C. 154 prescribes same for Vice Chairman except for October 1, provision.	No similar provision
Sec. 115. Eliminate mandatory terms of service for certain general and flag staff officers. Eliminates statutorily specified terms of office, including maximum terms of service (usually four years), for certain general and flag officers. These officers would instead serve at the pleasure of the President or the Secretary of the relevant military department.	Numerous sections of title 10 U.S.C. identified in draft bill prescribe mandatory terms for each service's legal, chaplain, and health professional career branches, and some others.	No similar provision
Sec. 116. Lateral reassignment of certain generals and admirals. Generally, would allow the President or Secretary of Defense to reassign officers already confirmed by the Senate in the grade of O-9 or O-10 to a position of the same grade without the need for a subsequent Senate confirmation. Reassignments to positions established in law (e.g. the Chairman of the Joint Chiefs of Staff and Service Chiefs) would continue to require Senate approval.	10 U.S.C. 601 requires officers in grades O-9 and O-10 who are renominated to another position in the same grade to be confirmed by the Senate in the new position.	No similar provision

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Sec. 117. Eliminate distribution quotas for general and flag officers serving in grades of O-7 and O-8. Eliminates requirement that at least 50% of general and flag officers serve in grades O-7 and O-8. Does not affect caps on officers in O-9 and O-10 grades.	10 U.S.C. 525(a) requires at least, 50% of all general/flag officers to be O-7s and no more than 15.7% - 17.5% to be O-9s and O-10s, thus requiring the remainder to be O-8s by default.	No similar provision
Sec. 118. Extending age limits for active duty general and flag officers. Sets normal mandatory retirement age for all regular general and flag officers at 68, but allows the Secretary of Defense to defer such retirement to age 72. Does not affect current mandatory retirement age for officers in grades O-6 and below.	With minor exceptions, 10 U.S.C. 125 requires active duty general/flag officers to retire at 62, with some extensions to 64.	No similar provision
Sec. 119. Extending age limits for Reserve and national Guard general and flag officers. Sets normal mandatory retirement age for all reserve general and flag officers at 68, but allows the Secretary of Defense to defer such retirement to age 72. Does not affect current mandatory retirement age for officers in grades O-6 and below. Eliminates requirement that reserve officers in grades O-7 and O-8 be removed after a specified number of years of service or time in grade. Eliminates limitations on term of office for the chiefs of the Army Reserve, Naval Reserve, Marine Corps Reserve, and Air Force Reserve.	Sections 14510-512 of title 10 U.S.C. require reserve general/flag officers in grade O-7 to retire at 60; O-8, 62; others holding particular positions at 64. 10 U.S.C. 10502 and 10505 require age 64 retirement for senior officers in the National Guard Bureau. 10 U.S.C. 14508 generally requires the removal of reserve officers in paygrades O-7 and O-8 after reaching 30 or 35 years of service, respectively, or five years in grade, although a small number of waivers are authorized. 10 U.S.C. 3038, 5143, 5144, and 8038 require four-year terms with one reappointment allowed for the Army, Naval, Marine Corps, and Air Force Reserve chiefs respectively.	No similar provision

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Sec. 120. Eliminate mandatory retirement of active duty general and flag officers after 30 years of service.	10 U.S.C. 635 requires active duty general/flag officers in grade O-7 to retire at 30 years of service; 10 U.S.C. 636 requires retirement at 35 years for O-8s, 38 years for O-9s, and 40 years for O-10s.	No similar provision
Sec. 121. More flexible retirement rules for military officers. Specifies that, in order to be eligible to retire at a given grade, regular and reserve officers in grades O-5 and O-6 must serve in that grade for three years; although the Secretary of Defense may authorize the military departments to reduce this period to two years. Allows officers in grades O-7 to O-10 to be retired in the highest grade in which the officer served "satisfactorily" without a time in grade requirement. Retirements of officers in the O-9 and O-10 grades must be approved by the Secretary of the military department concerned, and concurred with by the Secretary of Defense or a presidentially designated and Senate confirmed civilian official in the Office of the Secretary of Defense. Eliminates the requirement that the Secretary of Defense certify the satisfactory service of these officers in writing to Congress and the President	10 U.S.C. 1370 requires, with minor exceptions, officers to serve at least 3 years in grade; requires that Secretary of Defense to certify in writing to Congress and the President that officers in grades O-9 and O-10 have "served on active duty satisfactorily" in those grades before being allowed to retire in them; and prescribes detailed criteria for meeting the time-in-grade requirements specified.	No similar provision

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Sec. 122. More flexible computation of retired pay for officers and senior enlisted members. Allows officers in grades O-7 and above, who have more than 30 years of service, to exceed the 75% limit on the retired pay multiplier specified in 10 U.S.C. 1409, for service performed after October 1, 2003. Allows the Secretary of Defense to establish conditions under which enlisted personnel in grades E-8 and E-9 with more than 30 years of service can receive similar additional credit.	Chapter 71 of title 10 U.S.C., 10 U.S.C. 1401 et seq., limits retired pay to 75% of the retired pay computation base.	No similar provision
Sec. 123. Eliminated retired pay limit applicable to general and flag officers.	No existing law imposes the limit directly. Limit derives from 37 U.S.C. 203(a)(2), which limits active duty basic pay to that specified for Level III of the federal civilian Executive Schedule.	No similar provision

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Subtitle C — Transformation of Military Personnel (Sections 131-137)		
Sec. 131. Measuring personnel strengths. Would change the way Congress authorizes military personnel strength levels from "end strength" — that is, the personnel strength which exists on September 30th, the end of the fiscal year — to "average strength" — that is, the average personnel strength level maintained over the course of the fiscal year.	10 U.S.C. 115 requires active duty, full-time National Guard duty, and Selected Reserve personnel strength at the end of each fiscal year to be authorized by Congress.	No similar provision
Sec. 132. Access to secondary schools by military recruiters. Modifies 10 U.S.C. 503(c) so that only private secondary schools which a verifiable religious objection to service in the Armed Forces are exempt from the sections requirements on granting recruiter access to secondary school students and student information.	10 U.S.C. 503(c) requires secondary schools to provide military recruiters with the same access to its students as provided to post-secondary institutions or employers, and to provide access to student information such as names, addresses, and phone numbers. Exceptions to this policy are made for schools with verifiable religious objections to service in the Armed Forces and schools whose governing body has formally adopted a policy to deny recruiters access to their students and student information. 20 U.S.C. 7908 contains a similar policy, but only provides an exception for religious objections.	No similar provision
Sec. 133. Waiver of military education eligibility and post-education placement requirements. Changes the Secretary of Defense's authority to	All officers selected for promotion to brigadier general/rear admiral (lower half) [grade O-7], are required by 10 U.S.C. 663 to attend a "Capstone" professional military	No similar provision

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waive Capstone requirements for certain officers. Allows him to waive the requirement for officers whose proposed selection for promotion is based primarily on "career field specialty for which joint requirements do not exist." Eliminates the statutory requirements specifying the proportion of officers who must go to a joint assignment immediately after graduation from a joint PME school.	education (PME) course to prepare them for joint military operations as general/flag officers. Waivers are allowed for a variety of reasons, including for officers whose proposed selection for promotion is based primarily on "scientific and technical qualifications for which joint requirements do not exist." Subsection 663(d) requires a certain proportion of joint specialty officers who graduate from a joint PME course to go to a joint assignment immediately after graduation.	
Sec. 134. Length of joint duty assignments. Specifies that the length of a joint duty assignment will mirror the standard tour length the Secretary of Defense establishes for each installation or location. Specifies that duty at qualified Joint Task Force Headquarters requires one year of total service. No requirements for controlling average tour length.	10 U.S.C. 664 prescribes the length of joint duty assignments, generally not less than two or three years, and specifies the conditions under which the Secretary of Defense can modify the length of these assignments. Requires the Secretary of Defense to ensure that average tour length meets specified duration.	No similar provision
Sec. 135. Ordering reserve component members to active duty to respond to disasters, accidents, or catastrophes. Expands reasons under which 10 U.S.C. 12304 can be used to activate reservists to include providing assistance to an emergency involving serious disasters, accidents, or catastrophes.	10 U.S.C. 12304 authorizes up to 200,000 reservists to be on active duty at any one time if called other than in time of war or national emergency under its provisions, with a limit of 270 days for any reservist so activated. Domestic uses are not allowed except for matters attendant to the use or threatened use of a weapon of mass destruction, or a serious terrorist attack or threatened attack	No similar provision

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Sec. 136. Improved involuntary access to reserve component members for enhanced training. Allows the military departments to involuntarily order reservists to active duty for up to 90 days — with the consent of the governor in the case of National Guard units and personnel — to perform additional training related to meeting deployment standards.	None. 10 U.S.C. 10147 specifies, in effect, longstanding equivalents of one weekend per month and not less than 14 days of annual training per year, or 30 days of annual training only.	No similar provision
Sec. 137. Medical and dental screening for members of selected reserve units alerted for mobilization. Allows DOD to provide medical and dental screening and care to members of the Selected Reserve assigned to a unit that has been alerted for possible mobilization.	Existing law 10 U.S.C. 1074a(d) provides, for the Army reserve components only, medical and dental screening for those units scheduled for deployment within 75 days after mobilization.	No similar provision
Title II- Acquisition Transformation		
Subtitle A — Transformation of Acquisition Process (Sections 201-206)		
Sec. 201. Repeal requirements for major defense acquisition programs. This section would repeal the six statutory requirements for manpower estimates related to major defense acquisition programs, and is part of DOD's desire for greater flexibility,	10 U.S.C. 2430 - Defines what is a "major defense acquisition program. 10 U.S.C. 2431 - Weapons development and procurement schedules. 10 U.S.C. 2432 - Selected Acquisition reports 10 U.S.C. 2433 - Procurement Unit Costs	No similar provision

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efficiency, and "freedom to manage."	10 U.S.C. 2435 - Baseline descriptions. 10 U.S.C. 2440 - Technology and Industrial Base Plans 10 U.S.C. 2434 - Independent Cost Estimates; Operation Manpower Requirements.	
Sec. 202. Applicability of Clinger-Cohen Act to equipment integral to a weapon or weapon system and DOD information technology management. Permits Secretary of Defense to exempt this equipment from oversight and management controls of Clinger-Cohen Act contained in 40 U.S.C. 11302, 11303, 11312, 11313, and 11316. Reassigns DOD CIO system duplication elimination responsibility contained in 10 U.S.C. 22239(a) to Secretary of Defense and eliminates inventory requirement. Repeals all provisions of Sec. 811, PL 106-398.	Existing provisions of Clinger-Cohen Act: In accordance with 40 U.S.C. 11103, which defines "national security" information technology (IT) systems, 40 U.S.C. 11302-03 requires detailed oversight of national security-related information technology acquisition by OMB. 40 U.S.C. 11312-13 specifies various guidelines for maximizing efficiency and transparency in the IT acquisition and utilization process; 40 U.S.C. 11316 requires senior federal managers to carefully monitor agency IT management. 10 U.S.C. 2223(a) requires DOD Chief Information Officer (CIO) to eliminate duplicate IT systems in DOD and to maintain detailed inventory of DOD IT systems. Sec. 811, PL 106-398, requires DOD CIO to closely monitor, and approve in stages, major DOD IT acquisition efforts; requires, through FY2003, DOD to notify congressional defense committee when the CIO redesignates a "major" IT system as something else; and requires annual reports on DOD	No similar provision

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Repeals annual report requirement of Sec. 351, PL 107-314.	implementation of these statutes to those congressional defense committees. Sec. 351, PL 107-314, requires an annual report to Congress on "high" and "low"-threshold IT programs.	
Sec. 203. Inflation adjustment of acquisition-related dollar thresholds. This section increases the FARC's authority by granting it the authority to adjust statutory dollar thresholds for acquisition of goods or services in consultation with, or using escalation rates determined by Director, OMB, dating from the original enactment of the threshold to the date of the adjustment. Agency heads are granted similar authority in statutes exclusive of their agencies. 40 U.S.C. 276(a) is exempted from the authority to adjust thresholds. 41 U.S.C. 351 et seq. is exempted from the authority to adjust thresholds.	41 U.S.C. 421 established the Federal Acquisition Regulatory Council (FARC) as composed of the Federal Procurement Policy Administrator, Secretary of Defense, NASA Administrator, and GSA Administrator, or their designated representatives. The FARC publishes the Government-wide Federal Acquisition Regulation (FAR) and ensures that agency procurement regulations conform to the FAR. 40 U.S.C. 276(a) (Davis-Bacon Act) states that provisions of law dealing with wages paid on federal work shall apply to all contracts on public buildings and works generally, whether advertised for bid or cost-plus. 41 U.S.C. 351 et seq. (Services Contract Act), Service Contract Labor Standards, specifies provisions to be included in each federal service contract in excess of $2,500 that uses non-federal employees.	No similar provision

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Sec. 204. Security interest exception to domestic source or content requirements. Amends Subtitle A, Part IV, Subchapter V, Chapter 148 of Title 10 by adding Section 2539(c), Waiver of domestic source or content requirements.	10 U.S.C. 2533a. Requirement to buy certain articles from American sources with some exceptions. Also known as the Berry Amendment.	No similar provision
Sec. 205. Clarification of Buy American requirements. Amends 10 U.S.C. 2533a to allow DOD to expedite the procurement of items needed to support contingency operations, and in situations of "unusual and compelling urgency."	10 U.S.C. 2533a (see above) and 41 U.S.C. 10a through 10d (known as the Buy American Act).	No similar provision
Sec. 206. Amendment of cataloging and standardization provisions. 10 U.S.C. 2451(b) item identification requirement is eliminated. Eliminates 10 U.S.C. 2541(c) DOD standardization requirement. Permits DOD to adopt international or domestic voluntary standards, to develop DOD standards only when necessary, and to reduce number of sizes and kinds of similar items. Strikes 10 U.S.C. 2452(2),(3), and (4). Directs Secretary to participate with industry to develop voluntary standards and use them in lieu of government specifications and standards to the maximum extent.	10 U.S.C. 2451(b) requires that each DOD item recurrently used be identified by a single unique catalog identification from purchase through disposal. 10 U.S.C. 2541(c) requires that DOD, to the highest extent practicable, standardize the specification, packaging, and preserving, and efficiently inspect, test, and accept supply items. 10 U.S.C. 2452 (2), (3), and (4) require the Secretary of Defense to direct the use of the supply catalog for all supply functions from determination of requirements to final disposal, direct the screening and description of all items and the publication of the catalog, and to liaise with industry advisory groups on catalog and standardization program development.	No similar provision

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Renames "bureau and services" as "defense agencies" in 10 U.S.C. 2452(6).	10 U.S.C. 2452 (6) directs the Secretary to assign responsibility for parts of the catalog to military services and DOD bureaus and services.	
Deletes 10 U.S.C. 2452(7).	10 U.S.C. 2452 (7) directs the Secretary to establish time schedules for the assignments under (6), above.	
Repeals 10 U.S.C. 2453 and 2454.	10 U.S.C. 2453 and 2454 direct the Secretary of Defense to distribute parts of the supply catalog as they are produced and authorizes him/her to add new items and delete old items as necessary. Only items listed in the catalog may be routinely purchased, and new items, once purchased, must be added to the catalog.	
Eliminates 10 U.S.C. 2457(d).	10 U.S.C. 2457(d) requires a biennial report to Congress on progress in standardizing equipment with NATO members, including efforts undertaken and procurements made.	
Repeals 10 U.S.C. 2458	10 U.S.C. 2458 requires the Secretary of Defense to issue a single, uniform policy on the management of DOD inventory items, and to consider efforts to eliminate waste and achieve cost savings in the performance evaluations of procurement and inventory managers.	

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Subtitle B-Transformation of Contracting Process (Sections 211-214)		
Sec. 211. Contracting for Security Guards and Firefighting Services. Section 2465 of title 10, United States Code, would be repealed. Repeals current law by allowing DOD to conduct competitions for security guard and firefighting functions at military installations in the continental United States.	10 U.S.C. 2465 - Prohibition on contracts for performance of firefighting or security-guard functions generally denies obligation or expenditure of DOD appropriated funds for firefighting and security guard functions at any military installation or facility.	No similar provision
Sec. 212. Contracts with small business. Amends current law to establish annual goals for DOD small business contracts, and creates a new section, (10 U.S.C. 2382. Contracts with small businesses.)	10 U.S.C. 2381. Contracts: regulations for bids. 10 U.S.C. 2323. Contract goal for small disadvantaged business and certain institutions of higher education. 15 U.S.C. 544. Awards or contracts. Public Law 105-135, Small Business Reauthorization Act of 1997, Sections 411 through 414.	No similar provision
Sec. 213. Performance based logistics: special procurement and funding authority. Grants the Secretary of defense the authority to enter into long-term performance based logistics contracts, to improve the weapons procurement process, efficiency, and costs.	10 U.S.C. 2464. Core logistics capabilities. 10 U.S.C. 2466. Limitations on the performance of depot-level maintenance of material. 10 U.S.C. 2469. Contracts to perform workloads previously performed by depot-level maintenance and repair workloads formerly performed at certain military installations. 31 U.S.C. 1301. Application.	No similar provision

The Defense Transformation For the 21st Century Act — Proposed	Current Law (Except DHS Citations)	Homeland Security Act of 2002 DHS-Specific Provisions
Sec. 214. Depot-related legislative reform. Amends 10 U.S.C. 2466 which allows no more than half (50%) of the funds made available in a given fiscal year, to a military department, for depot-maintenance and repair work to be contracted out for performance by the private sector. The amendment would set a minimum of half (50%) of the depot maintenance and repair workloads to be performed by federal government personnel or at government-owned facilities.	10 U.S.C. 2460. Definition of depot-level maintenance and repair. 10 U.S.C. 2466. Limitations on the performance of depot-level maintenance of material. 10 U.S.C. 2469. Contracts to perform workloads previously performed by depot-level maintenance and repair workloads formerly performed at certain military installations. 10 U.S.C. 2469a. Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations. 10 U.S.C. 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other federal agencies. 10 U.S.C. 2472. Management of depot employees. 10 U.S. C. 2474. Centers of Industrial and Technical Excellence.	No similar provision

The Defense Transformation For the 21st Century Act — Proposed	Current Law (Except DHS Citations)	Homeland Security Act of 2002 DHS-Specific Provisions
Title III — Installation Management Transformation (Section 301)		
Sec. 301(a) would create a new chapter (§2015-§2019) in Part III of Subtitle A of Title 10 in the U.S. Code ("Training Generally"). This new chapter would modify existing statutes indirectly for certain military and related activities, provisions that are sometimes referred to as "waivers," for military readiness activities from certain requirements under four federal environmental statutes that are codified under other titles: Endangered Species Act (16 U.S.C. 1531 et seq.); Clean Air Act (42 U.S.C. 7401 et seq.); Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.). Consequently, the language of these four statutes would not be amended directly. This new chapter would apply to the Department of Defense and the U.S. Coast Guard.	While there is no exact comparable provision in current law, national security exemptions may be obtained on a case-by-case basis under the Endangered Species Act [16 U.S.C. 1536(j)]; Clean Air Act [42 U.S.C. 7418(b)]; Solid Waste Disposal Act [42 U.S.C. 6961(a)]; and CERCLA [42 U.S.C. 9620(j)].	No similar provision
§2015. Purpose of this chapter. Explains the Administration's justification for the need to modify certain environmental requirements to preserve the use of lands, marine areas, and airspace withdrawn or designated for military use, in order to ensure military readiness.	No comparable provision in current law.	No similar provision

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§2016. Definitions. Would create statutory definitions for (1) "military readiness activities," (2) "combat" or "combat use," and (3) "Department" (as used in 10 U.S.C. 101(a)(6) to mean the Department of Defense and the U.S. Coast Guard).	10 U.S.C. 101 (Armed Forces) does not include a comparable definition for "military readiness activities" or "combat" or "combat use."	No similar provision
§2017. Military readiness and the conservation of protected species. (a) would determine that an Integrated Natural Resource Management Plan (INRMP) for military lands which "addresses endangered or threatened species and their habitat" provides "special management considerations or protection" and would therefore preclude designation of such lands as critical habitat under the Endangered Species Act.	16 U.S.C. 670a (Sikes Act Improvement Act) requires the Secretary of each military department to cooperate with the U.S. Fish and Wildlife Service and state fish and wildlife agencies in order to prepare and implement an INRMP for each military installation in the United States with "significant" natural resources. Each plan is to reflect a mutual agreement on integrating an installation's mission with requirements to conserve, protect, and manage natural resources. 16 U.S.C. 1532(5)(A) (Endangered Species Act) defines "critical habitat" as geographical areas that are (i) "essential to the conservation" of an endangered or threatened species, and (ii) which "may require special management considerations or protection." Can include areas that are currently unoccupied by an endangered or threatened species if such areas include habitat that is essential to the conservation of the species.	No similar provision

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	16 U.S.C. 1533 specifies the criteria that the Secretary of the Interior or the Secretary of Commerce must use to determine whether a species is endangered or threatened.	
(b) would specify that precluding the designation of critical habitat for an endangered or threatened species does not remove the requirement for agency consultations under Section 7(a)(2) of the Endangered Species Act.	16 U.S.C. 1536(a)(2) requires each federal agency to consult with the Secretary of the Interior or the Secretary of Commerce to insure that any action carried out by that agency "is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification" of critical habitat for such species, unless an exemption for the action has been granted by an "Endangered Species Committee," composed of the Secretary of the Army and the heads of several federal environmental and natural resource agencies.	No similar provision
§2018. Conformity with State Implementation Plans for air quality. Would provide that the Department shall not be prohibited from conducting military readiness activities under the Clean Air Act's conformity requirement, but requires that the Department estimate the quantity of emissions caused by the readiness activities, notify the state air quality agency before engaging in such activities, and ensure conformity within 3 years of the date new activities begin. In assessing non-attainment of several standards, the Environmental Protection	42 U.S.C. 7506 (Clean Air Act) prohibits federal departments or agencies from engaging in or supporting activities that do not conform to a State Implementation Plan (SIP) approved under the Clean Air Act. SIPs inventory emissions and identify the measures that will be taken to control them in order to attain six national air quality standards in areas identified as nonattainment.	No similar provision

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Agency will consider whether an area would attain or maintain required air quality, "but for" DOD military readiness activities.		
§2019. Range management and restoration. (a)(1)(A) would create a new statutory definition of solid waste that would alter the definition provided in the Solid Waste Disposal Act. The new definition would categorize military munitions as solid waste if they have been deposited on an "operational range" *and* they (i) are removed for reclamation, treatment, or disposal; (ii) are recovered, collected, and disposed of by burial or land filling; (iii) migrate off an operational range and are not addressed under CERCLA; or (iv) are deposited off an operational range and are not "promptly rendered safe or retrieved."	42 U.S.C. 6901(Solid Waste Disposal Act) defines solid waste in general terms, but does not explicitly address military munitions. A more specific definition is provided in federal regulation (40 CFR 266.202). These regulations identify the conditions under which military munitions are considered solid waste, and are therefore subject to waste management and disposal requirements under the Solid Waste Disposal Act. There is disagreement as to the extent to which the current regulations differ from the Administration's proposed statutory language. 42 U.S.C. 9601 et seq. (CERCLA) specifies requirements for response to contamination from the release of hazardous substances into the environment, as well as the liability for such response.	No similar provision
(a)(1)(B)would specify that military munitions defined as solid waste shall be subject to provisions in the Solid Waste Disposal Act, "including but not limited to" provisions regarding employee protection (Section 7002) and citizen suits (Section 7003).	42 U.S.C. 6971 (Section 7002) prohibits an employer from firing or discriminating against an employee who reveals a solid or hazardous waste violation that an employer has committed. Also specifies reporting requirements regarding information needed to protect the occupational safety and health of workers at solid and hazardous waste	No similar provision

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	management and disposal facilities. 42 U.S.C. 6972 (Section 7003) permits citizen suits against any person who violates requirements under the Solid Waste Disposal Act.	
(a)(2) would establish statutory language to exclude military munitions from the definition of solid waste if they (i) are used in training activities, or research, development, testing and evaluation of military munitions, weapons, or weapons systems and remain on an operational range; or (ii) are "promptly rendered safe or retrieved" when deposited off of an operational range; or (iii) are "recovered, collected, and destroyed on-range" in the process of clearing a range, "but not including the on-range burial of unexploded ordnance and contaminants when the burial is not a result of product use."	As noted above, 42 U.S.C. 6901 defines solid waste in general terms, but does not explicitly address military munitions. Rather, the conditions when military munitions are considered solid waste are specified in federal regulation (40 CFR 266.202).	No similar provision
(a)(3) would specify that military munitions on an operational range would be subject to applicable legal requirements once the range ceases to be operational.	No comparable provision in current law.	No similar provision
b)(1) would create a new statutory definition of "release" that would alter the definition of this term under CERCLA for the activities covered. Military munitions would be defined as a "release" if they are deposited off an operational range, or if they migrate off an operational range.	42 U.S.C. 9601(22) (CERCLA) defines "release" for the purposes of determining when the emission of a hazardous substance into the environment is covered under CERCLA. Military munitions are not explicitly addressed in the definition of release under current law.	No similar provision

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(b)(2) would establish statutory language to exclude from the definition of "release" military munitions on an operational range that have been deposited "incident to their normal and expected use and remain thereon" from the definition of release under CERCLA.	No comparable provision in current law.	No similar provision
(b)(3) would retain the President's authority under CERCLA to take action in the event that there is an "imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance," resulting from the deposit or presence of military munitions on an operational range. Also would specify that the Department of Defense would retain its authority "to protect the environment, safety, and health on operational ranges."	42 U.S.C. 9606(a) (CERCLA) authorizes the President to take action that would abate an imminent and substantial danger or threat to public health or welfare, or the environment, from an actual or threatened release of a hazardous substance.	No similar provision
Sec. 301 (b) would amend the Marine Mammal Protection Act to preserve the use of marine areas for combat training purposes in order to ensure military readiness. This subsection would apply to the Department of Defense and the U.S. Coast Guard.	16 U.S.C. 1361 et seq.	No similar provision
§301(b)(1)(A) would provide a separate definition of harassment applicable to military readiness activities.	16 U.S.C. 1362 (18) defines two levels of harassment that are applicable to all activities wherein marine mammals are pursued, tormented, or annoyed. Harassment is defined as anything having the	No similar provision

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Harassment, applicable to military readiness activities, is defined as any action that injures or has "significant potential" to injure; or that disturbs or is "likely" to disturb; or such that "behavioral patterns are abandoned or significantly altered;" or is "directed toward a specific individual, group or stock of marine mammals in the wild," that is likely to disturb by disrupting behavior.	"potential" to injure. Harassment is defined as anything with the "potential" to disturb. Harassment is defined as anything that "causes] disruption of behavioral patterns." No comparable provision in current law.	
§301(b)(1)(B) would add new definitions of "military readiness activities," "combat or combat use," and "Department of Defense."	These terms are not defined in current law.	No similar provision
§301(b)(2)(A) would create a new category of exemption for the Department of Defense, providing for five-year authorizations for incidental taking of marine mammals, specifically for military readiness activities. This exemption is almost exactly the same as that provided for the commercial fishing industry in 16 U.S.C. 1371(a)(5), with the addition that nothing "shall require disclosure of information classified in the interests of national defense."	16 U.S.C. 1371 provides for a blanket moratorium on the taking and import of marine mammals, with specific exemptions, including for scientific research, public display, photography, enhancement of survival or recovery, import of polar bear trophies from Canada, during commercial fishing, deterring a marine mammal from damaging private property or endangering personal safety, and by certain Alaskan Natives	No similar provision
§301(b)(2)(B) would reletter subsections of 16 U.S.C. 1371.	Technical amendment.	No similar provision

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§301(b)(2)(C) would add, near the end of 16 U.S.C. 1371, a blanket exemption for "actions necessary for national defense."	No similar provision is provided by current law.	No similar provision
Title IV — Administrative Transformation		
Subtitle A — Transformation of DOD Organization (Sections 401-405)		
Sec. 401 - Reorganization Within the Department of Defense. Subsections (b) and (c) of 10 U.S.C. 125 would be redesignated as subsections (c) and (d) and a new section (b) would be added, providing that, "Notwithstanding any provision of this title, after the expiration of 60 days after providing notice of such action to Congress, the Secretary of Defense, subject to direction of the President, would be authorized substantially to transfer, reassign, consolidate, reorganize, or abolish a function, power, organization, position, or duty vested in the Office of the Secretary of Defense, or an officer, official, or agency thereof."	10 U.S.C. 125 - Functions, powers, and duties; transfer, reassignment, consolidation, or abolition restricts the power of the secretary, except when determined by the president to be necessary because of hostilities or an imminent threat thereof, to transfer, reassign, consolidate, or abolish a function, power, or duty vested in DOD by law.	Sec. 872 - Reorganization of P.L. 107- 296 authorizes the DHS Secretary to allocate or reallocate functions among officers and establish, consolidate, alter, or discontinue organizational units but only pursuant to the president's reorganization plan in sec. 1502(b) of P.L. 107-296 or after expiration of 60 days after notifying appropriate congressional committees. This authority does not extend to abolishing any agency, entity, organizational unit, program, or function established or required to be maintained by the P.L. 107-108 or other statute.
Sec. 402 - Reassignment of Personnel Serving in the Office of the Secretary of Defense. Section 143 of title 10, United States Code, would be repealed.	10 U.S.C. 143 - Office of the Secretary of Defense (OSD) personnel establishes a permanent limitation on OSD military and civilian personnel, defines personnel, and	No similar provision

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	limits reassignment of functions to evade the personnel limitation	
Sec. 403 - Appointments of Retired Members of the Armed Forces to Positions in the Department of Defense Section 3326 of title 5, United States Code, would be repealed.	5 U.S.C. 3326 - Appointments of retired members of the armed forces to positions in the Department of Defense. A retired armed forces member may not be appointed to a civil service position in DOD within 180 days immediately following retirement unless the secretary concerned authorizes it, the minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305, or a state of national emergency exists.	No similar provision
Sec. 404 - Transfer of Department of Defense Personnel Security Investigative Functions and Defense Personnel Performing Those Functions grants the secretary discretion to transfer to OPM and OPM discretion to accept personnel security investigation functions currently performed by DOD's Defense Security Service and, if OPM accepts those functions, it must accept the employees performing those functions and their supervisors and may accept support staff and higher level supervisors. Transferred personnel would be protected from separation or reduction in grade of compensation for one year after transfer date. Any transfer for this purpose would be considered a transfer of function under 5 U.S.C. 3503.	5 U.S.C. 3503 - Transfer of functions provides that when a function is transferred from one	No similar provision with respect to transferring security investigative functions, but *see* below. Sec. 841(b) of P.L. 107-296 - Effect on Personnel, provides that (1) generally the transfer to the Department of Homeland Security of full-time and part-time employees holding permanent positions shall not cause them to be separated or reduced in pay for 1 year after transfer; (2) any person who, on the day preceding transfer to the Department, held an Executive Level position and who, without a break in service, is appointed to a DHS position with comparable duties continues to be compensated in the new position at

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	agency to another or when one agency is replaced by another, each competing employee must be transferred before the receiving agency may make an appointment from another source.	not less than the rate provided for such position for the duration of service in the new position; and (3) that any exercise of authority under chapter 97 of title 5 must conform with the requirements of section 841(b).
Sec. 405 - Conversions of Commercial Activities. (a) Section 2461(b)(3)(A) of title 10, United States Code, would be amended by (1) striking "of the cost;" (2) striking "savings" and inserting "best value;" (3) redesignating clause (iii) as (iv); and (4) inserting after (ii) the following new clause (iii): "Benefits in addition to price that warrant performance of the function by a source at a cost higher than that of performance by Department of Defense civilian employees."	10 U.S.C. 2461 - Commercial or industrial type functions; required studies and reports of savings to be achieved before converting to contractor performance Section 2461(b)(3)(A) states that: (3) An analysis of commercial or industrial typ function for possible change to performance by the private sector shall include the following: (A) An examination of the cost of performance of the function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether change to performance by the private	No similar provision

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	sector will result in savings to the government over the life of the contract, including in the examination the following: (i) The cost to the government, estimated by the Secretary of Defense (based on offers received), for performance of the function by the private sector. (ii) The estimated cost to the government of Department of Defense civilian employees performing the function. (iii) In addition to the costs referred to in clause (i), an estimate of all other costs and expenditures that would incur because of the award of such a contract.	
(b) Contracting if Best Value. - Section 2462(a) of title 10, United States Code, would be amended by striking "such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, executive order, or regulation) than the cost at which the Department can provide the same supply or service" and inserting "performance by that source represents the best value to the government, determined in accordance with the competition requirements of OMB Circular A-76."	10 U.S.C. 2462 - Contracting for certain supplies and services required when cost is lower Section 2462(a) states that: (a) In General. — Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or government	No similar provision

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	personnel) from a source in the private sector if such source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, executive order, or regulation) than the cost at which the Department can provide the same supply or service.	
Subtitle B — Transformation of Appropriations and Budget Process (Sections 411-414)		
Sec. 411. Enhanced general transfer authority. Relaxes 10 U.S.C. 2214. Permits Secretary of Defense to transfer 2.5% of annual working capital or military function (not military construction) appropriations between funds with 15-day prior notification to Congress. The percentage able to be transferred is doubled during war or national emergency. The prohibition on presenting requests for transfers to lower-priority items to Congress is eliminated.	10 U.S.C. 2214 stipulates that funds authorized in an appropriation Act for transfer in a working capital fund or between funds appropriated for military functions of the Department of Defense (other than military construction), the transferred funds are to be merged with and be used for the same purpose and for the same period as the existing appropriation. Amounts can be transferred for use only on a higher priority item (based on an unforseen military requirement) than for which originally appropriated and cannot be used for any item already denied by Congress. DOD and the military departments are forbidden to request transfer to a lower priority item. The Secretary is to promptly notify Congress of such transfer.	No similar provision

The Defense Transformation For the 21st Century Act — Proposed	Current Law (Except DHS Citations)	Homeland Security Act of 2002 DHS-Specific Provisions
Sec. 412. Transfer of funds to correct specific acquisition funding problems. This creates new authority within 10 U.S.C. 2214 to supplement development funds with transfers of up to $20 million (per program) or $250 million (per FY) from appropriated procurement accounts. Unused funds may be returned to procurement accounts.		No similar provision
Sec. 413. Ballistic missile defense system. Repeals 10 U.S.C. 223 which provides Congress authority to require DOD to submit to Congress budget justification material for individual programs of the ballistic missile system.	10 U.S.C. 223 enacted as Section 233 of the National Defense Authorization Act for Fy1998, P.L. 105-85. FY02 appropriations conferees anticipated and supported creation of the MDA, but cautioned DOD against creating a management and decision-making structure that would limit oversight by operational test and evaluation and program review agencies (see H. Rpt 107-350). This was repeated for FY03 (H.Rept. 107-732).	
Sec. 414. Funding for the Missile Defense Agency (MDA). Directs that all funding for Missile Defense Agency activities be appropriated into a "Missile Defense Agency" account and maybe obligated for three years. This could reduce the separation between development and procurement funds.	No existing statutes.	No similar provision

The Defense Transformation For the 21st Century Act — Proposed	Current Law (Except DHS Citations)	Homeland Security Act of 2002 DHS-Specific Provisions
Subtitle C — Transformation of Information Gathering for Congress (Sections 421-422)		
Sec. 421. Sunset on recurring reports, termination five years after the date of the enactment of the statute requiring the report, the annual report of the Secretary of Defense (10 U.S.C. 113) excepted.	No similar provision (Cf. 109 Stat. 707 and 112 Stat. 3280).	Sec. 311(h), (j). Reports of the Homeland Security Science and Technology Advisory Committee are eliminated with the committee three years after the effective date of the act. Sec. 312(f)-(g). Annual report of the Homeland Security Institute is eliminated with the Institute three years after the effective date of the act.
Sec. 422. Repeal of 180 Department of Defense reporting requirements; modification of three other reporting requirements.	No Similar provision (Cf. 109 Stat. 707 and 112 Stat. 3280).	Sec. 889(b). Repeal of duplicative reports mandated by Sec. 1051 of P.L. 105-85 and Sec. 1403 of P.L. 105-261.
Subtitle D — Transformation of Management of Naval Vessels (Sections 431-432)		
Sec. 431. Repeal of notice and wait period prior to reducing the inventory of combatant surface vessels. 10 U.S.C. 7296 is repealed.	10 U.S.C. 7296 requires that, before the number of Navy surface combatants (i.e., cruisers, destroyers, and frigates) can be reduced from 116 or higher to less than 116, or from some number less than 116 to a lesser number, the Secretary of the Navy must notify the House and Senate Armed Services Committees in writing, and a period of 90 days following the date on which the notification is received must expire. 10 U.S.C. 7296 also requires that, whenever the	No similar provision

The Defense Transformation For the 21st Century Act — Proposed	Current Law (Except DHS Citations)	Homeland Security Act of 2002 DHS-Specific Provisions
	number of active Navy surface combatants is less than 116, the Secretary of the Navy must maintain a sufficient number of inactive surface combatants on the Naval Vessel Register to enable the Navy to return to a force of not less than 116 surface combatants within 120 days after the date of any decision by the President to increase the number of surface combatants.	
Sec. 432. Overhaul and repair of ships on extended deployments. Adds provision to 10 U.S.C. 7310 to permit a US-homeported vessel deployed overseas for more than 12 months to be overhauled, repaired, or maintained by a shipyard outside the US or Guam.	10 U.S.C. 7310 prohibits the Navy from using shipyards outside the United States or Guam to overhaul, repair or maintain Navy ships that are homeported in the United States, except for the purpose of making voyage repairs (i.e., repairing equipment that breaks while the ship is on an overseas voyage.).	No similar provision
Subtitle E — Miscellaneous Provisions (Section 441)		
Sec. 441. Support of foreign nations committed to combating global terrorism. Would authorize $200 million. Permits Secretary of Defense with concurrence of Secretary of State, to provide up to $200 million annually in additional military assistance or support to foreign nations that assist the US in combatting global terrorism.	No similar provision.	No similar provision

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